IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

FRIDAY, THE 29TH JUNE 2007 / 8TH ASHADHA 1929

OP.No. 6622 of 2002(L)

PETITIONER:

RONY PHILIP S/O.PHILIP,MANALAL HOUSE,
PUTHUPPALLY P.O.,KOTTAYAM DISTRICT.

BY ADV. SRI.MATHEW JOHN (K)
SRI.BABY THOMAS

RESPONDENTS:
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1. **THE ASSISTANT PROVIDENT FUND COMMISSIONER,EMPLOYEES' PROVIDENT FUND ORGANISATION,SUB REGIONAL OFFICE,CHALAKKUZHI BUILDINGS,C.M.S. COLLEGE ROAD,P.B.NO.36, KOTTAYAM 686 001**

2. **TOM THOMAS,MANAGING PARTNER, KONDODY MOTORS,KODIMATHA P.O.,KOTTAYAM DISTRICT.**

BY ADV. SRI.MATHEWS J.NEDUMPARA, SC,P.F.ORGSN.
SRI.N.N. SUGUNAPALAN, SC, P.F.
SRI.S.SUJIN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 29/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP. NO.6622/2002

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE CERTIFICATE DT. 28.12.2000.

EXT.P2:- COPY OF THE ORDER DT. 8.10.01 BY THE 1ST RESPONDENT.

EXT.P3:- COPY OF THE ORDER DT. 16.8.01 BY THE 1ST RESPONDENT.

EXT.P4:- COPY OF THE REVIEW PETITION DT.19.10.01 BY THE PETITIONER.

EXT.P5:- COPY OF THE ARGUMENT NOTE DT. 31.12.01.

EXT.P6:- COPY OF THE PROCEEDINGS OF THE 1ST RESPONDENT DT. 18.1.02.

/TRUE COPY/

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T.R.RAMACHANDRAN NAIR, J.

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O.P.No. 6622 of 2002 (L)

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Dated this the 29th day of June, 2007

J U D G M E N T

Aggrieved by the orders in Exts.P2 and P6, the petitioner has filed this original petition. The petitioner is a proprietor of a motor transport undertaking by name M/s.Mariya Travels, Puthuppally. He was employing a total number of nine employees, who are covered by the provisions of the Kerala Motor Transport Workers Welfare Fund Act. Ext.P1 shows that the petitioner is an assessee of the Welfare Fund Contribution, as above mentioned.

2. It is the case of the petitioner that in the year 1995, the petitioner purchased two buses from the second respondent. The second respondent was an establishment to which the provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952, was applicable. It is the admitted case that four employees, namely, K.V.Mathew, Jose Joseph, V.V.Varghese and T.M.Yohannan, who were governed under the provisions of

the Act while they were working under the second respondent, joined the petitioner's establishment, compelling the petitioner to pay contribution in respect of them under the above Act. A code number was alloted to them and remittances were being made under the above code. The employment of the said persons were validly terminated in September, 1997. And, thereafter, under intimation to the Provident Fund organisation, the petitioner stopped paying contribution also. This was because of the fact that the establishment of the petitioner was not otherwise covered and the coverage was limited only to the above four employees.

3. But the first respondent did not leave the matter as such and proceedings were initiated for realising the contribution payable to the fund. Ext.P2 is the order passed under Section 7A of the E.P.F and M.P. Act. The first respondent presumed that the provisions of the Act is applicable to the establishment and the change of a set of employees will not affect the continued applicability thereof to the establishment. It is also stated that the provisions of the Kerala Motor Transport Workers Welfare

Fund Act shall not be applicable to the establishment to which provisions of the E.P.F and M.P. Act is applied.

4. The petitioner filed a review petition seeking review of the above order on various grounds. Ext.P4 is the review petition. In the review petition, the petitioner mainly contended that the petitioner was never an applicant for a separate code for the entire establishment; that the petitioner has been paying Provident Fund in respect of only four employees, who were formally working under M/s.Kondody Motors and after they left employment in September 1997, the petitioner is not liable to pay any amount by way of contribution to the fund. It was also pointed out in the review petition that by way of a registered communication, the petitioner had intimated the authority well in time, in 1997 itself, that all the four employees have left the service of the petitioner's establishment.

5. Therefore, it is a case where the first respondent had to determine whether there was coverage for the petitioner's establishment or not and, whether he was liable to pay any

amount at all. But the order, Ext.P6, again passed by the first respondent, shows that the first respondent in essence presumed that the establishment itself was covered and, even though the four employees were transferred to the petitioner's establishment, these are units of the same establishment and are not separate and different and, hence, when there is coverage for the Kondody Motors, that will automatically apply to the petitioner also.

6. It appears that the first respondent has not properly assessed the issue in the right perspective. Admittedly, the petitioner happened to make contribution only towards the four employees, who were employed with him because of the purchase of the two buses by the petitioner from Kondody Motors. If that is the only transaction which resulted in the continued payment of the contribution, I see no reason as to how it can be held that the entire establishment of the petitioner is covered under the E.P.F and M.P Act, as held by the first respondent. It is also to be noticed that the petitioner had another nine employees under his establishment, who were

covered under the Kerala Motor Transport Workers Welfare Fund Act. It is the said coverage, which was earlier in point of time is a fact, which is not disputed. If that be so, the reasoning adopted by the first respondent that the provisions of the Kerala Motor Transport Welfare Fund Act shall not be applicable to the establishment to which E.P.F and M.P Act is applicable, is not correct. The first respondent has not applied his mind to the very relevant contentions raised by the petitioner in the review petition. The first respondent proceeded on the basis that the establishment of the petitioner is only a unit of M/s.Kondody Motors. There is no reference to any document in the order to support that conclusion. The very basis of Ext.P2 is that the establishment of the petitioner was a partitioned unit of M/s.Kondody Motors, which is an establishment to which the provisions of the E.P.F and M.P Act is applicable. The said conclusion is not supported by any materials. In the counter affidavit filed by the first respondent also, the same contention is repeated. Even though, during the arguments, the counsel for the first respondent pointed out that the state of affairs is the same, no material could be placed before this Court in support of

the same. However, it is stated in the order Ext.P6 that the petitioner actually wanted to allot a code number for the establishment itself, but that also is not supported by any material.

The petitioner is, therefore, entitled to succeed. It is not a case where the establishment itself is covered. It is also not disputed that no contribution is made to the other nine employees. The authority has clearly misdirected itself in taking the view that the whole establishment was covered under the Central Act of 1952. The conclusions which forms the basis of Ext.P2 and Ext.P6 are without any application of mind. It is a case where the petitioners' establishment is covered only under the Motor Transport Workers Welfare Fund Act. The finding that the establishments are not separate and different is also not correct, in view of the above aspects. Therefore, the assessment made in Ext.P2, as affirmed in Ext.P6, suffers from legal infirmities, and, therefore, Exts.P2, P3 and P6 are quashed. The petitioner is not liable to pay any contribution as assessed in them. This will not stand in the way of any action being taken by

the first respondent against the second respondent for any contribution legally payable by them.

The original petition is allowed as above.

T.R.RAMACHANDRAN NAIR,
Judge

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T.R.RAMACHANDRAN NAIR, J.

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O.P.No. 6622 of 2002 (L)

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29th June, 2007